

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CHARLES IZAC,

Petitioner,

v.

MARION FEATHERS,

Respondent.

MOSMAN, J.,

No. 3:14-cv-01713-JE

OPINION AND ORDER

On September 21, 2015, Magistrate Judge John Jelderks issued his Findings and Recommendation [36], recommending that I DENY Petitioner Charles Izac's Motion for Summary Judgment [28] and DISMISS Mr. Izac's Petition for Writ of Habeas Corpus [1] with prejudice for lack of jurisdiction. Judge Jelderks also recommended that I allow a certificate of appealability. Petitioner objected to the Findings and Recommendation [39].

DISCUSSION

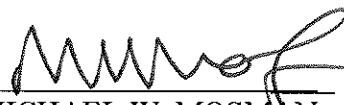
The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Jelderk's recommendation in part and I ADOPT in part the F&R [36] as my own opinion. Petitioner's Motion for Summary Judgment [28] is DENIED and his Petition for Writ of Habeas Corpus [1] is DISMISSED with prejudice. I will allow a certificate of appealability only on the first issue of whether a convicted person can be actually innocent of an aspect of his sentence without begin actually innocent of the underlying crime, but not on the issue of whether a petitioner's Virginia burglary convictions qualify as predicate offenses under the ACCA. All other pending motions are DENIED as moot.

IT IS SO ORDERED.

DATED this 12th day of November, 2015.


MICHAEL W. MOSMAN
United States District Judge